

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA, §
§
Plaintiff, §
§
VS. § CRIMINAL ACTION NO. H-01-472-2
§
NICHOLAS NNAJI, §
§
Defendant. §

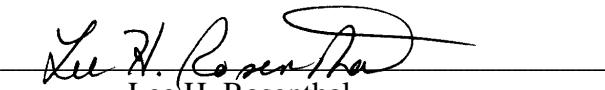
ORDER

On March 14, 2013, the defendant, Nicholas Nnaji, filed a motion for resentencing. (Docket Entry No. 297). The defendant claims that his total offense level was wrongfully inflated by two points, due to an obstruction of justice enhancement applied in the presentence report (paragraph 30). At the time of sentencing, Nnaji proclaimed he was a naturalized citizen of the United States. When the probation officer attempted to verify, the Bureau of Immigration and Naturalization responded that Nnaji was not a naturalized citizen. Nnaji believes he was sentenced at a total offense level of 36 and asks the court reduce his offense level by two points, for a total offense level of 34. He provided a copy of a naturalization certificate in support of his argument.

On June 4, 2002, the court sentenced the defendant for distributing heroin. During the sentencing, Nnaji's contested citizenship was presented to the court. The court declined to impose an obstruction of justice enhancement because Nnaji's status was unclear. The Judgment's Statement of Reasons accurately reflects that paragraph 30 was modified and that the total offense level at sentencing was 34, not 36. Nnaji's sentence of 188 months is a guideline sentence for a total

offense level of 34 and Criminal History Category of I. Nnaji was sentenced according to his request and there is no error to be corrected. His motion is denied.

SIGNED on May 6, 2013, at Houston, Texas.


Lee H. Rosenthal
United States District Judge